IN THE HIGH COURT OF BOMBAY AT GOA

LETTERS PATENT APPEAL NO. 8 OF 2004

M/s. Zuari Industries Ltd.,
being a Company registered under
Companies Act, 1956, having its
factory at Zuarinagar, Goa. ..... Appellant.

V/s.

1. Goa Shops & Industrial Worker's Union,
Registered Office at B/4-2, `Karishma'
Martires Dias Vishant, Aquem Alto,
Margao, Goa 403 601.

2. Mr. Deepak Kharangate,
Balrishna Niwas, Coldem Road,
Navelim, Salcete, Goa.

3. Industrial Tribunal,
1st Floor, Shram Shakti Bhavan,
Patto, Panaji, Goa. ..... Respondents.

Mr.P.K. Rele, Senior Advocate, with Mr. Girish Sardessai, Advocate for the appellant.

Mr. G. Cama, Senior Advocate with Mr. V. Menezes, Advocate for respondent No.1.

Mr. C.V. Singh with Ms. Gauri Bhonsle, Advocates for respondent No.2.

CORAM : A.P. LAVANDE &
N.A. BRITTO, JJ.

Date of reserving the Order :
9th February, 2005.

Date of Pronouncing the Order :
28th February, 2005.

O R D E R : (Per LAVANDE, J.)

This letters patent appeal is directed against the Order dated 6.10.2004 passed by the learned Single Judge of this Court in Writ Petition No. 316/2004, filed by the appellant herein against the Order passed by the Industrial Tribunal, dismissing the application for amendment filed by the appellants herein in reference made by the Government under Section 10 of the Industrial Disputes Act, 1947 (hereinafter, referred to as "the **Act**'**).** The following dispute was referred to the Industrial Tribunal for adjudication by order dated 7.4.2003:

(1)Whether the following dispute/demands raised by the Goa Shops and Industrial Workers Union on 30/9/2002, on behalf of the canteen contract workpersons at M/s. Zuari Industries Ltd., are legal and justified ?

(a) That the contract between ZACL (ZIL) and Shri Deepak Kharangate with regard to running of the canteen in the factory premises is a sham and bogus contract.

(b) That the workmen whose names are listed in Annexures A and B hereto and who are/were employed in the canteen at ZACL (ZIL) through the contractor are entitled to be absorbed as regular workmen of ZACL (ZIL) from 12.3.1997;

(c) That the canteen contract workpersons after regularisation, are entitled to fitment as detailed in Annexure "C" .

(2)If not, what relief the workpersons are entitled to ?

In the course of proceedings before the Industrial Tribunal, an amendment application was filed by the appellant herein, which was dismissed by the Industrial Tribunal, against which Writ Petition No.316/2004 was filed by Zuari Industries Ltd., the appellant herein. After hearing all the parties, the learned Single Judge by Order dated 6th October, 2004, which is impugned in this appeal, summarily rejected the petition. However, the learned Judge observed that if the petitioner Company applies to the Industrial Tribunal only to place on record the averments in paragraphs 13(a) to 13(d), of Annexure B to the amendment application, the same be allowed and it was also clarified that no additional issue or issues beyond the issues already framed in reference No.IT/21/2003 shall be framed by the Tribunal.

2. We have heard Mr.P.K. Rele, learned Senior Advocate, with Mr. Girish Sardessai, learned Advocate for the appellant, Mr. G. Cama, learned Senior Advocate with Mr. V. Menezes, learned Advocate for respondent No.1 and Mr. C.V. Singh with Ms. Gauri Bhonsle, learned Advocates for respondent No.2. At the outset, Mr. Cama, learned Senior Advocate for respondent No.1 submitted that the impugned order has been passed by the learned Single Judge under Article 227 of the Constitution of India, as observed in paragraph 9 of the impugned Order and, therefore, this letters patent appeal under clause 15 is not maintainable. The learned Counsel further submitted that although the

petition was styled as under Article 226 of the Constitution, in substances, the petition was under Article 227 of the Constitution. The learned Counsel submitted that the petition filed was not for seeking substantive relief, but was filed to challenge an order passed by the Industrial Tribunal and, therefore, the appeal is clearly not maintainable against the impugned Order. In support of his submission, the learned Counsel relied upon the following Judgments :

(1)***Sushilabai Laxminarayan Mudliyar and ors vs. Nihalchand, Waghajibhai Shaha and ors.*** (AIR 1992 SC 185);

(2) ***M.C. Mehta v. Union of India and ors.*** (AIR 1998 SC 617)

(3) Kondiba Dhondiba Dalvi since deceased by his LRs. Smt. Chandrabhagabai Kondiba Dalvi and ors. vs. Narayan Namdeo Nanware, (2001 (2) Mh. L.J. 820)

(4) Surya Dev Rai vs. Ram Chander Rai and ors. ((2003) 6 SCC 675).

3. Per contra, Mr. Rele, learned Senior Counsel appearing for the appellant submitted that the learned Single Judge was not justified in holding that the petitioner was not entitled to any relief under Article 227 of the Constitution inasmuch as the petition was filed by the petitioner under Article 226 of the Constitution. The learned Counsel further submitted that the learned Judge without giving any reasons as to why he considered the petition as under Article 227 and not under Article 226, has held that no case was made out to interfere with the impugned

order under Article 227. It is further submitted that it is for the party to choose whether to file petitioner under Article 226 or 227, or both under Articles 226 and 227 and once the party invokes Article 226 and files a petition, the Court is not justified in holding that the petition has to be considered under Article 227 and at the most, the Court can refuse to exercise its jurisdiction under Article 226 if the relief cannot be granted to the petitioner under Article 226. The learned Counsel further submitted that the prayer sought for in the petition was by way of writ of certiorari under Article 226 and, therefore, the finding recorded by the learned Judge that the petition is under Article 227, is without any foundation. He submitted that the petition having been filed under Article 226, the present L.P.A. is clearly maintainable under Clause 15. In support of his submissions, the learned Counsel relied upon the following authorities :

(1) ***Umaji Keshao Meshram and ors. vs. Radhikabai, widow of Anandrao Banapurkar and anr.*** (1986) (Supp) SCC 401

(2) ***Jagdish Balwantrao Abhyankar vs. State of Maharashtra*** (AIR 1994 BOMBAY 141);

(3) ***Maharashtra Krishna Valley vs. Tukaram S. Veer,*** (2004(2) Bom C.R. 394)

The learned Counsel for the appellants further submitted that the facts in the petition clearly justify filing of the petition under Article 226 and,

therefore, in fairness and justice to such a party, and in order not to deprive the petitioner of the valuable right of appeal, the leaned Judge ought not to have treated the petition as under Article 227, which would result in depriving the petitioner from filing the letters patent appeal under Clause 15. The learned Counsel further submitted that in view of the ratio laid down by Full Bench of this Court in the case of ***Jagdish Balwantrao Abhyankar vs. State of Maharashtra (supra),*** the petition filed was clearly maintainable under Article 226 and, therefore, the appellant herein cannot be deprived of its right of filing an appeal against the order passed by the learned Single Judge on the basis of the conclusion formulated by the Full Bench in paragraphs 30 of the said Judgment.

4. Mr. Singh, learned Counsel appearing for respondent No.2 has adopted in toto, the submissions made by Mr. Rele, learned Counsel appearing for the appellants.

5. We have considered the submissions made by the learned Counsel appearing for the parties. We have gone through the Judgments relied upon by the respective parties.

6. In the case of ***Kondiba Dhondiba Dalvi since deceased by his LRs. Smt. Chandrabhagabai Kondiba Dalvi and ors.(supra),*** the

Division Bench of this Court while dealing with the question as to whether a letters patent appeal is maintainable against an order passed by the learned Single Judge, in paragraph (10) has held as follows :

> "10. Thus, it is clear from the above that a petition may be filed under Article 227 or 226 or under both. If it is filed under Article 226 then facts should justify such filing and prayers can be granted. If it is not so, then it can be said that there are two ways open for the Court. Court can straightway dismiss the petition or for doing justice it can examine as if filed under Article 227 and see whether any relief can be granted to the party. This is precisely what has been done by the learned Single Judge in this case."

In the above case, the Division Bench of this Court made the above observations after considering the ratio laid down by the Apex Court in the cases of ***Umaji vs. Smt. Radhikabai,*** (AIR 1986 SC 1272) and ***Jagdish Balwantrao Abhyankar vs. State of Maharashtra (supra)***. In the said Judgment, in paragraph 13, the Court further observed as follows :

> "13. If the tests laid down by the Division Bench as mentioned above are taken into consideration, it is clear from the facts, totality of the circumstances and the pleadings, it was clearly a

> petition under Article 227 of the Constitution of India. Further, the approach and the observations made by the learned Single Judge and considering the contentions raised before him and prayer made show that he was asked to exercise the Supervisory Jurisdiction under Article 227 of the Constitution of India. The real nature of the prayer made and the order passed go to show that the High Court was asked to exercise supervisory jurisdiction under Article 227 over the subordinate Courts. It is clear from the tests mentioned above that one cannot merely go by the title of the petition or the Article mentioned in prayer clause. One has to take into consideration all the facts, totality of the circumstances and the pleadings and to find out what jurisdiction was invoked of the High Court. Taking into consideration the same, we are of the opinion that the High Court was, in fact, called upon to exercise the jurisdiction under Article 227 of the Constitution of India and it was so exercised same."

7. Having regard to the observations made by the Division Bench of this Court, after considering the Judgments of the Apex Court in ***Umaji's*** case and full Bench of this Court in ***Jagdish Balwantrao Abhyankar's*** case, it is clear that in order to find out whether the petition is under Article 226 or 227, totality of the circumstances and the pleadings have to be considered. The Court should consider whether the

facts justify filing of the petition under Article 226 or 227 of the Constitution of India. Having regard to the tests laid down by the Division Bench of this Court, one merely cannot go by title of the petition or the Article mentioned in the prayer clause, but what has to be taken into consideration is the totality of the circumstances and pleadings and thereafter, it has to be found out what jurisdiction was actually invoked. If Single Judge of this Court, after taking into consideration all these factors, comes to the conclusion that in fact he exercises jurisdiction under Article 227 of the Constitution of India, which in fact could be only exercised, no fault could be found with the order passed by the Single Judge. In the present case, we find that this is what exactly has been done by the learned Single Judge, although the learned Single Judge has not given reasons for holding that the relief is refused under Article 227. But that, by itself, would not be a ground to hold that the appeal is maintainable. The maintainability of the letters patent appeal would not depend upon what Article was invoked by the petitioner, but what would be relevant is what jurisdiction was available and was exercised by the learned Single Judge. In the present case, as stated above, the learned Single Judge has observed in paragraph 9 of the order that there is no case made out to interfere with the impugned order under Article 227 of the Constitution and hence the challenge to the said order must fail at the threshold. We do not find any infirmity in the said finding given by the learned Single Judge. We are in respectful

agreement with the ratio laid down by the Division Bench of this Court in the case of ***Kondiba Dhondiba Dalvi since deceased by his LRs. Smt. Chandrabhagabai Kondiba Dalvi and ors.(supra).*** We are, therefore, unable to accept the submission made by the learned Counsel appearing for the appellant as well as respondent No.2 that it is for the petitioner to decide either to invoke Article 226 or 227, or both and the same would determine the maintainability of the letters patent appeal.

8. In view of the above, we hold that this appeal is not maintainable under Clause 15 and, as such, the appeal deserves to be dismissed in limine.

9. The learned Counsel appearing for the parties have also advanced arguments on merits and invited our findings on merits. Since we have held that this appeal is not maintainable, we deem it appropriate not to deal with the merits.

10. In the result, therefore, the appeal is summarily rejected. Having regard to the facts and circumstances of the case, the parties to bear their own costs.

A.P. LAVANDE, J.

N.A. BRITTO, J.

ssm.